



# STATE OF INDIANA

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January 2, 2014

Mr. Charles J. Rocek  
703 E. Swayze St.  
Marion, IN 46952

*Re: Formal Complaint 13-FC-341; Alleged Violation of the Access to Public Records Act by the Purdue Research Foundation*

Dear Mr. Rocek,

This advisory opinion is in response to your formal complaint alleging the Purdue Research Foundation ("PRF") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. Anthony S. Benton, Esq., responded to your complaint on behalf of PRF. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 13, 2013.

## **BACKGROUND**

Your complaint alleges the Purdue Research Foundation violated the Access to Public Records Act by denying producing records responsive to your request.

On or about November 22, 2013, you served upon the PRF a public records request seeking information related to the purchase and appraisal of a parcel of real property. The PRF responded on December 5, 2013 by stating they are not a public agency as intended by the Indiana General Assembly and therefore are not subject to the APRA. The PRF's response to your formal complaint reiterates that position and gives a brief background of the PRF's genesis and ongoing purpose.

## **ANALYSIS**

The public policy of the APRA states that "(p)roviding persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1.

Under the Access to Public Records Act, the definition of "public agency" is, in relevant part, any county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town. IC 5-14-3-2(1)(2)(A). In addition, a public agency is any other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area, the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power. IC 5-14-3-2(1)(2)(C). Finally, the term "public agency" also applies to any entity or office that is subject to an audit by the state board of accounts. IC 5-14-3-2(1)(3).

The Purdue Research Foundation does not consider itself a public agency therefore rendering them not subject to Indiana's public access laws. The PRF has provided its Certificate of Existence issued by the Indiana Secretary of State and I have verified the document to be authentic. The PRF acknowledges a relationship with Purdue University, a public agency, but contends the relationship alone does not make the PRF itself a public agency.

Under the APRA, a party seeking records has the burden of proving the party with the records is a public agency within the meaning of the APRA. *Indianapolis Convention and Visitors Ass'n., Inc. v. Indianapolis Newspapers, Inc.*, 577 N.E.2d 208 (Ind. 1991). You have not set forth any argument as to why the PRF should be considered a public agency for the purposes of the APRA. It does not appear the PRF exercises any executive, administrative, judicial, or legislative power of the state or a delegated local governmental power. Likewise, they are not audited by the State Board of Accounts.

Absent any other evidence which would suggest the PRF is a public agency, I cannot state affirmatively they would fall under the jurisdiction of the APRA or the Open Door Law.

### CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Purdue Research Foundation did not violate the Access to Public Records Act.

Regards,



Luke H. Britt  
Public Access Counselor

Cc: Mr. Anthony S. Benton, Esq.